

² In the Matter of MariTEL, Inc. and Mobex Network Services, LLC, *Report and Order*, FCC 07-87, 22 FCC Rcd 8971 (2007) (“Report and Order”).

Rule Section 1.52 of the Commission's Rules and Regulations; and procedurally defective, in violation of Sections 1.106(h).

I. INTRODUCTION

1. Havens has been "practicing" *pro se* at the FCC for many years. Accordingly, he must adhere to the ethical and procedural standards that are applicable to all persons making submissions to the Commission. The Commission must not allow the non-attorney status of Havens to prevent it from enforcing its code of professional behavior on him. It is submitted, for example, that Sections 1.52 and 1.24(a) of the Rules ³ must apply to Havens with respect to making unsubstantiated claims and scurrilous personal attacks. Havens must be held to a proper standard or denied the right to participate in Commission proceedings. ⁴

2. Additionally, in an *Order on Reconsideration* released in January of 2007, the Broadband Division of the Wireless Telecommunications Bureau warned Havens that if he continued to premise pleadings on allegations that were previously adjudicated in favor of the petitioned party, he would face "summary dismissal of his pleadings" or an alternative prior screening procedure for his pleadings. It further warned that it would impose sanctions. ⁵ On this basis and as argued below, PSI requests that the Commission summarily dismiss or strike the referenced Reply.

³ 47 CFR §§1.52 and 1.24(a).

⁴ See *Anthony R. Martin-Trigona* ("Martin-Trigona"), 592 F.Supp. 1566, 1568 (D. Conn, 1984)("The affidavits also detail Martin-Trigona's penchant for viciously abusing and harassing opposing parties, counsel, and, in the words of the Court of Appeals, 'anyone [else] who so much as crosses his path,' *In re Martin-Trigona*, 737 F. 2d at 1254, 1263 (2nd Cir. 1984). As this court has previously found, see *In re Martin-Trigona*, *supra*, F. Supp at 1264 para. 12, in findings affirmed by the Court of Appeals, *In re Martin-Trigona*, 737 F. 2d at 1259-1260, Martin-Trigona's harassment and defamations cause emotional distress and injury to his victims and subject them to embarrassment among professional colleagues, insurers, and the general public. As in all such situations, the truth takes all too long to overcome the lie."; see also; *Nationwide Communications, Inc.*, 13 FCC Rcd 5654 (1998).

⁵ *Order on Reconsideration*, DA 07-148, 22 FCC Rcd 665 at ¶16 (2007).

II. DISCUSSION

A. The Reply Is Irrelevant To The Proceeding

3. Normally, PSI would not burden the Commission with a Motion to Dismiss or to Strike an irrelevant reply to an opposition in a rule making reconsideration. However, the unfounded personal attack and the publication of potentially libelous statements from an unrelated state court complaint compels the relief requested.

4. Here, PSI is gratuitously attacked and a Complaint filed in Superior Court of the State of California in the County of San Mateo is appended which presents arguments that the Commission has already considered and denied in FCC proceedings. Nevertheless, Havens presents the Complaint, *without* a ruling by the Superior Court or even a response from PSI, as if it contains verifiable facts. This is simply not the forum to include such nonsense and the Reply should be dismissed or stricken.

B. The Reply Is Scandalous

5. Havens accuses PSI and its Attorney of misrepresentation stating that “This misrepresentation is characteristic of PSI and its counsel....”⁶ Apparently what triggered the tirade against PSI and its counsel this time was a footnote in PSI’s Opposition that stated: “The Electronic Comment Filing System (“ECFS”), however, lists the filing date as July 9, 2007.” Attached is Exhibit 1, a copy of the Records in Proceeding 04-257, which speaks for itself. PSI made an observation. Havens elevates this observation to a “misrepresentation,” and attributes this so-called “misrepresentation” to PSI’s counsel. Such conduct must not be tolerated.

6. Havens also took this opportunity to present accusations of all sorts of violations of FCC rules as well as other state and federal violations. However, none of these accusations

⁶ Reply at page 1.

are substantiated by *any* facts and, in truth, in *every* decided proceeding in which Havens has pressed his allegations, the FCC has resolved the issues in favor of PSI.

7. Havens, as discussed above, attached a copy of a Complaint against PSI and others filed in the courts in California to the Reply. Not only is the Complaint irrelevant to the issues raised in the above rule making, it has not even been addressed by PSI. Yet, Havens repeats in this forum his claims of misconduct by PSI and others. The reply and the attachment are unsupportable. It also is scandalous in the submission of the copy of the Complaint which contains allegations of wrongdoing yet to be determined. The only remedy is to dismiss or strike the reply and the attachment.

C. The Reply is Procedurally Defective, In Violation of Sections 1.106(h).

8. Havens, for all practical purposes, has not responded to PSI's Opposition as required in Section 1.106(h). Instead, he has introduced new arguments that are not allowed by the Commission's Rules. To present tirades and an entirely extraneous matter violates the FCC Rules and Regulations. The Reply must be dismissed or stricken.

III. CONCLUSION

9. For all of the reasons presented herein, PSI requests that the Commission dismiss the Havens Reply to Opposition to the Petition for Reconsideration or, in the alternative, strike it.

Respectfully submitted,
PAGING SYSTEMS, INC.

By:



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David L. Hill
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Dated: September 13, 2007

74006.1:999914:00014

EXHIBIT 1**32 Record(s) Found For Proceeding:04-257**

Record 1 through 10 displayed

Proceeding: 04-257 Date Received/Adopted: 09/07/07 Document Type: <i>REPLY</i> File Number/Community: Filed on Behalf of: AMTS Consortium LLC et al Filed By: Attorney/Author Name: Warren Havens Complete Mailing Address: 2649 Benvenue Ave., #2-3 Berkeley, CA 94704 View	Type Code: <i>RL</i> Date Released/Denied: Total Pages: 9 DA/FCC Number: Date Posted Online: 09/11/07
Proceeding: 04-257 Date Received/Adopted: 08/22/07 Document Type: <i>OPPOSE</i> File Number/Community: Filed on Behalf of: Paging Systems, Inc. Filed By: Hall, Estill, Hardwick, Gable, Golden & Nelson, PC Attorney/Author Name: Audrey P. Rasmussen Complete Mailing Address: 1120 20th Street, NW, Suite 700 North Washington, DC 20036 OPPOSITION TO PETITION FOR RECONSIDERATI	Type Code: <i>OP</i> Date Released/Denied: Total Pages: 7 DA/FCC Number: Date Posted Online: 08/22/07
Proceeding: 04-257 Date Received/Adopted: 07/25/07 Document Type: <i>PUB NOTICE</i> File Number/Community: Report No. 2822 Filed on Behalf of: RIC Filed By: FCC Attorney/Author Name: Tamatha D. Love Complete Mailing Address: 445 12th Street SW Washington, DC 20554 View	Type Code: <i>PN</i> Date Released/Denied: Total Pages: 1 DA/FCC Number: Date Posted Online: 07/27/07
Proceeding: 04-257 Date Received/Adopted: 07/19/07 Document Type: <i>OPPOSE</i> File Number/Community: RM-10743 Filed on Behalf of: Paging Systems, Inc. Filed By: Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C. Attorney/Author Name: Audrey P. Rasmussen Complete Mailing Address: 1120 20th Street, NW, Suite 700 North Washington, DC 20036 OPPOSITION TO PETITION FOR RECONSIDERATI	Type Code: <i>OP</i> Date Released/Denied: Total Pages: 6 DA/FCC Number: Date Posted Online: 07/19/07
Proceeding: 04-257 Date Received/Adopted: 07/09/07 Document Type: <i>PET RECON</i>	Type Code: <i>PR</i> Date Released/Denied: Total Pages: 6

File Number/Community: Filed on Behalf of: Intelligent Transportation & affiliates Filed By: Attorney/Author Name: Complete Mailing Address: 2649 benvenue ave, 2-6 berkeley, CA 94704 PETITION FOR RECONSIDERATION	DA/FCC Number: Date Posted Online: 07/09/07
Proceeding: 04-257 Date Received/Adopted: 07/06/07 Document Type: LETTER File Number/Community: Filed on Behalf of: AMTS Consortium LLC Filed By: Attorney/Author Name: Warren C. Hayes Complete Mailing Address: 2649 Benvenve Avenue #2-3 Berkeley, CA 94704 View	Type Code: LT Date Released/Denied: Total Pages: 5 DA/FCC Number: Date Posted Online: 07/24/07 (Posted After the Opposition was Filed)
Proceeding: 04-257 Date Received/Adopted: 06/13/07 Document Type: PETITION File Number/Community: Filed on Behalf of: Northeast Utilities Service Company Filed By: Keller and Heckman LLP Attorney/Author Name: Martin W. Bercovici Complete Mailing Address: 1001 G Street NW, Suite 500 West Washington, DC 20001 PETITION	Type Code: PT Date Released/Denied: Total Pages: 3 DA/FCC Number: Date Posted Online: 06/14/07
Proceeding: 04-257 Date Received/Adopted: 11/21/05 Document Type: NOTICE File Number/Community: Filed on Behalf of: Motorola Filed By: Attorney/Author Name: Complete Mailing Address: 1350 I Street, NW suite 400 Washington, DC 20005 ERRATA, ERRATUM OR ADDENDUM	Type Code: NO Date Released/Denied: Total Pages: 2 DA/FCC Number: Date Posted Online: 11/21/05
Proceeding: 04-257 Date Received/Adopted: 11/15/05 Document Type: NOTICE File Number/Community: Filed on Behalf of: Motorola Filed By: Attorney/Author Name: Complete Mailing Address: 1350 I Street, NW Suite 400 Washington, DC 20005 NOTICE	Type Code: NO Date Released/Denied: Total Pages: 2 DA/FCC Number: Date Posted Online: 11/16/05
Proceeding: 04-257 Date Received/Adopted: 11/15/05	Type Code: NO Date Released/Denied:

Document Type: *NOTICE*
File Number/Community:
Filed on Behalf of: Motorola
Filed By:
Attorney/Author Name:
Complete Mailing Address:
1350 I Street, NW
Suite 400
Washington, DC 20005
NOTICE

Total Pages: 2
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Date Posted Online: 11/16/05

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updated 12/11/03

CERTIFICATE OF SERVICE

I, Gladys L. Nichols, do hereby certify that on this 13th day of September 2007, the foregoing **MOTION TO DISMISS OR TO STRIKE** was served on the following persons by first-class United States mail, postage prepaid:

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/s/Gladys L. Nichols

* By Electronic Mail